civil court. He also took the view that unless there was proof of serious injury or imminent danger to the general public interest it was not proper to invoke the aid of this Chapter. I agree with those views but would add that in my opinion the overriding consideration must always be the public interest.

I have therefore come to the conclusion that this is not a fit matter for me to interfere.

Order accordingly.

Solicitors:—*Tan, Rajah & Cheah.*

SEOW PENG KUAN v. REGINA

[A.Cr.J. (Winslow J.) June 19, 1963]

[Singapore — Magistrate's Appeal No. 42 of 1963]

Customs and Excise—Possession of dutiable samsu —Customs Ordinance, 1960, s.113—Accused leaning against car containing tins of samsu—Finger-prints of accused on rear window of same car—Whether possession proved.

Possession of dutiable samsu under section 113 of the Customs Ordinance is not proved by evidence showing that the accused was leaning against the car in which the dutiable samsu was found and that his finger-prints were on the rear window of the car.

MAGISTRATE'S CRIMINAL APPEAL.

S. H. D. Elias for the appellant.

Donald Yeo for the Crown.

Winslow J. (delivering oral judgment): In this appeal against his conviction on a charge of possessing dutiable samsu under section 113 of the Customs Ordinance (No. 44 of 1960) the main evidence against the appellant is that he was leaning against the car which was later found to contain certain tins of samsu. His finger prints were found on the rear window of the car. Even giving the prosecution every benefit with regard to the finding of these prints, to wit, that they were impressed on that window prior to the arrival of the police and not after he was handcuffed and placed inside the car, there is very little either in his circumstance or otherwise to connect the appellant with the samsu which was found in the boot of the car and the other package found on the front seat. The circumstances are extremely suspicious but I do not think possession of the samsu has been proved as it should have been proved. In the circumstances the appeal is allowed and the conviction quashed.

Appeal allowed.

Solicitors:—*Elias Bros.*

YAT YUEN HONG CO. LTD. v. SHERIDAN-LEA & ANOR.

[C.A. (Wee Chong Jin C.J., Tan Ah Tah and Buttrose JJ.)

June 24, 1963]

[Singapore — Civil Appeal No. 2 of 1963]

Tort—Escape of filled earth—Damage caused by—"Non-natural use" of land—Rule in Rylands v. Fletcher —Whether applicable.

The appellants, land developers, were at the material dates developing their land which was adjacent to and on a higher level than the respondents' nursery garden. The appellants had filled with earth the slope and this filled earth slipped during a heavy rain on the night of August 28, 1958, as a result of which part of the retaining wall collapsed on the respondents' land and destroyed their plants, fencing, bower, stands and other equipment. In the Court below Chua J. held that the defendants were liable because in his view "to pile loose earth on a steep slope so that more flat land would be available for the house is 'non-natural use' of the land and the defendants having placed an artificial mass in a dangerous position are responsible for the consequences." On appeal it was contended that the learned trial Judge was wrong in law in holding that the doctrine of *Rylands* v. *Fletcher* applied.

Held: to pile loose earth on a steep slope so that more flat land would be available is "non-natural use" of the land and, therefore in this case the appellants were liable under the rule in *Rylands* v. *Fletcher.*

Cases referred to:—

(1) *Rylands* v. *Fletcher* (1868) L.R. 3 H.L. 330.

(2) *Ilford Urban Council* v. *Beal* [1925] 1 K.B. 671.

(3) *Nichols* v. *Marsland* (1875) L.R. 10 Ex. 255.

(4) *St. Anne's Well Brewery Co.* v. *Roberts & Ors.* 44 T.L.R. 703.

(5) *Wilkins* v. *Leighton* [1932] All E.R. Rep. 55.

(6) *Attorney-General* v. *Cory Bros. & Co.* [1921] A.C. 521.

(7) *Read* v. *Lyons* [1947] A.C. 156.

(8) *Hale* v. *Jennings Bros.* [1938] 1 All E.R. 579.

(9) *Jones* v. *The Festiniog Railway Co.* (1868) 3 Q.B. 733.

(10) *Halsey* v. *Esso Petroleum Co. Ltd.* [1961] 1 W.L.R. 683.

COURT OF APPEAL.

L. A. J. Smith for the appellants.

J. E. Lloyd for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an appeal from the judgment of Chua J. in favour of the plaintiffs' claim for damage to property which belonged to them as partners in the business of nursery gardeners carried on by them at No. 10 Binjai Park, Singapore. The damage was caused by the escape of filled earth from the defendants' land.